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09/800,387	03/05/2001	Jeffrey L. Krout	BASI.IP2020	3310

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J. Robert Brown, Esq.
WORSHAM, FORSYTHE & WOOLDRIDGE, L.L.P.
Energy Plaza, 30th Floor
1601 Bryan Street
Dallas, TX 75201-3402

EXAMINER
COLLINS, GIOVANNA M

ART UNIT	PAPER NUMBER
3679	

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/800,387	Applicant(s) KROUT ET AL.	
	Examiner Giovanna M. Collins	Art Unit 3679	

-- The MAILING DATE f this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 2-13,16-24,26 and 27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 2-13,16-24,26 and 27 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Objections

Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 16 only repeats the limitations of claim 13 of a first terminal attached to a first portion and a second terminal electrically coupled to the first terminal.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 6-8 and 10-12 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 6 recites that the "sidewall defines a cavity of the substantially cylindrical body". Claim 6 depends from claim 1 which state apparatus is formed of "single body". The specification did not disclose a cavity on the embodiment of the apparatus, which is formed of a single body.

Claim 10 recites that the "plurality of sidewalls defines a cavity in the substantially rectangular body". Claim 10 depends from claim 1 which state apparatus is formed of "single

body". The specification did not disclose a cavity on the embodiment of the apparatus, which is formed of a single body.

Claims 7-8 and 11-12 depend from claims 6 and 10 respectively and likewise are not enabling.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 2-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sichler ('442)

Sichler discloses an apparatus (see Fig.1) for use in repairing a leak in a plastic pipe, the apparatus comprising a single body (1) constructed of a substantially rigid material and having an upper surface and a lower surface, the lower surface adapted to be positionable about at least a leak portion of a plastic pipe; and an electrofusion element (4) disposed about the lower surface of the body substantially defines a perimeter postionable adjacent the leak portion of the plastic pipe to sealably couple with the plastic pipe to encapsulate the leak.

Referring to claim 3, Sichler discloses wherein the apparatus further includes a terminal (19) electrically connected to the electrofusion element (at 2) operable to energize the electrofusion element.

Referring to claim 4, Sichler discloses a fastener (see Fig. 5, 30) operable to secure the apparatus to the plastic pipe.

Referring to claim 5, Sichler discloses wherein the body (1) is a substantially cylindrical body provided with at least one sidewall (at 28) extending from the body such that the lower surface is positioned on one end of the sidewall.

1. Claims 2-3 are rejected under 35 U.S.C. 102(b) as being anticipated Bridgstock et al. ('650)

Bridgstock et al. disclose an apparatus (see Fig.2) for use in repairing a leak in a plastic pipe, the apparatus comprising a single body (1) constructed of a substantially rigid material and having an upper surface and a lower surface, the lower surface adapted to be positionable about at least a leak portion of a plastic pipe; and an electrofusion element (2) disposed about the lower surface of the body substantially defines a perimeter postionable adjacent the leak portion of the plastic pipe to sealably couple with the plastic pipe to encapsulate the leak.

Referring to claim 3, Bridgstock et al. disclose wherein the apparatus further includes a terminal (14) electrically connected to the electrofusion element (11) operable to energize the electrofusion element.

2. Claims 13,17-23, 24 and 26-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Vanderlee ('640).

Vanderlee disclose discloses (see Fig. 1) an apparatus (10) for use in repairing a leak in a plastic pipe, the apparatus comprising a first portion (20a, 60a, 40a) having a first pipe engaging electrofusion surface (see Fig. 3, at 36)), a second pipe engaging electrofusion surface (see Fig. 3, at 56), a first contact surface (at 30,at 74,at 50), and a second contact surface (180 degrees opposite of 30, 74 and 50); and a second portion (20b, 60b, 40b) having a first pipe engaging electrofusion surface (see Fig. 3, at 36), a second pipe engaging electrofusion surface (see Fig. 3, at 56), a first contact surface (at 32, at 72,at 52), and a second contact surface (180 degrees opposite 32, 72, 52) wherein the first portion and the second portion are operable to encapsulate the leak, the first pipe engaging electrofusion surfaces of the first and second portions are operable to couple around the pipe to form a first seal, the second pipe engaging electrofusion surfaces of the first and second portions are operable to couple around the pipe to form a second seal, the first contact surfaces of the first and second portions are operable to sealably couple with one another, and the second contact surfaces of the first and second portions are operable to sealably couple with one another; a first terminal (35) attached to the first portion, a second terminal (35a) electrically coupleable to the first terminal and a communication line (27) positioned to electrically couple the first and second portion when the first and second portions are positioned for engagement such that when electricity is applied to the first and second terminal, the electricity is communicated to energize the electrofusion surfaces of the first and second portions.

Referring to claim 16, Vanderlee discloses wherein the apparatus further includes a first (35) and a second terminal (35), the first terminal attached to the first portion and operable to energize the first and second pipe engaging electrofusion surfaces of the first portion, the second terminal (35a) attached to at least one of the first and second portions and operable to energize the first and second pipe engaging electrofusion surfaces of the second portion.

Referring to 19, Vanderlee discloses a fastener (32,30) operable to secure first and second (20) portions together.

Referring to claim 20, Vanderlee discloses wherein the first and second pipe engaging electrofusion surfaces (36 and 56) and the first and second contact surfaces (30, 70, 50) of the first portion define a sidewall providing a cavity (29, 69, 49) within the first portion such that the cavity communicates with a leak portion of the plastic pipe.

Referring to claim 21, Vanderlee discloses wherein the first portion (20a, 60a, 40a) is provided with a passageway (90) defining an opening extending therethrough the first portion, the passageway in communication with the cavity (at 69) of the first portion.

Referring to claim 22, Vanderlee discloses wherein the first and second pipe engaging electrofusion surfaces (36, 56) and the first and second contact surfaces (32, 72,52) of the second portion define a sidewall providing a cavity (29,69,49) within the second portion such that the cavity communicates with a leak portion of the plastic pipe.

Referring to claim 23, Vanderlee discloses the plastic pipe is a polyethylene pipe (see col. 1, lines 27-31).

Referring to claim 24, Vanderlee discloses a method for sealing a leak in a plastic pipe comprising providing an apparatus comprising a first portion (20a, 60a, 40a) having a first pipe

engaging electrofusion surface (36), a second pipe engaging electrofusion surface (56), a first contact surface (30,70,50), and a second contact surface (opposite 30,50,70); and a second portion (20b, 60,40b) having a first pipe engaging electrofusion surface (36), a second pipe engaging electrofusion surface (56), a first contact surface (32,52,72), and a second contact surface (opposite 32,52,72) wherein the first portion and the second portion are operable to encapsulate the leak, the first pipe engaging electrofusion surfaces of the first and second portions are operable to couple around the pipe to form a first seal, the second pipe engaging electrofusion surfaces of the first and second portions are operable to couple around the pipe to form a second seal, the first contact surfaces of the first and second portions are operable to sealably couple with one another, and the second contact surfaces of the first and second portions are operable to sealably couple with one another; a first terminal (35) attached to the first portion, a second terminal (35a) electrically coupleable to the first terminal and a communication line (27) positioned to electrically couple the first and second portion when the first and second portions are positioned for engagement such that when electricity is applied to the first and second terminal, the electricity is communicated to energize the electrofusion surfaces of the first and second portions; and encapsulating the leak in the plastic pipe with the a first portion and a second portion; electrofusing the first portion and the second portion together at the first contact surfaces; electrofusing the first portion and the second portion together at the second contact surfaces; electrofusing the first and second pipe engaging electrofusion surfaces of the first and second portions; and electrofusing the second pipe engaging electrofusion surfaces of the first and second portions.

Referring to claim 26, Vanderlee discloses further includes a fastener (32) on at least one of a first (20a, 60a, 40a) and second portions (20b, 60b, 40b) operable to secure the first portion to the second portion, and wherein a method further includes fastening the fastener (at 30) to secure the first portion to the second portion about the plastic pipe.

Referring to claim 27, Vanderlee discloses wherein the apparatus further includes an opening (90) in at least one of the first and second portion communicating with the leak in the plastic pipe, and wherein the method further comprising testing the leak in the plastic pipe via the opening in the apparatus (see col. 3, line 62-65) and sealably covering (at 108) the opening in the apparatus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bridgstock et al. ('650) in view of Sichler ('442).

Bridgstock et al. discloses the apparatus of claim 3 but does not disclose a fastener operable to secure the apparatus to the plastic pipe. Sichler teaches (see fig. 5) a fastener (30) operable to secure a electrofusion element (2) to a plastic pipe. Sichler further teaches fastener increases the pressing force that can be applied during welding and thus reduces the amount of material used (see col. 1, lines 39-51). Therefore it would be obvious for one skilled in the art at

the time of the invention to modify Bridgstock et al. to have a fastener as taught by Sichler because a fastener increases the pressing force that can be applied during welding and thus reduces the amount of material used.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bridgstock et al. ('650) in view of Sichler ('442) as applied to claim 4 above, and further in view of Japanese Patent 405180391 to Magari et al.

Bridgstock et al., as modified, discloses the apparatus of claim 4. Bridgstock et al. does not disclose a substantially rectangular body. However, Bridgstock does discloses that different types of fittings can be used (see col. 1, lines 57-61). Magari et al. teach (see Fig. 1) an apparatus (1)wherein a body (at 11) is substantially rectangular provided with a plurality of sidewalls (at 13) extending form the body such a lower surface (11) is position on one end of the sidewalls.

Response to Arguments

Applicant's arguments with respect to claims 2-13, 16-24 and 26-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 4,571,488 to Reeves discloses an electrofusion apparatus formed of a single body.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Giovanna M. Collins whose telephone number is 703-306-5707. The examiner can normally be reached on 7:30-4 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3620

gmc
December 2, 2002